

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 716

Introduced by Senator Lara

February 22, 2013

An act to add ~~Section 2636.5~~ *Sections 2644, 2646, and 2647* to, and to repeal and add *Sections 2635, 2636, 2637, 2638, 2639, and 2643* of, the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 716, as amended, Lara. Inmates: civil rights.

Existing law requires the Department of Corrections and Rehabilitation to institute certain practices to prevent sexual violence and promote inmate and ward safety in the Department of Corrections and Rehabilitation.

This bill would require ~~the department and the sheriff of a county jail to create a safe environment free from sexual abuse for inmates or arrestees, including those inmates or arrestees with a United States Immigration and Customs Enforcement hold, by doing certain things, including, among other things, establishing a zero-tolerance policy and creating specific policies and procedures prohibiting employee sexual misconduct toward inmates or arrestees, prohibiting sexual misconduct between either arrestees or inmates, or both, and requiring mandatory reporting by employees of all allegations of sexual misconduct. The department and the sheriff would also be required to establish a process for how inmates or arrestees are screened during an initial intake assessment to ensure their safety from harm or harassment, or to keep them from harming others, including training of employees in identifying whether the inmate or arrestee requires a separate detention area for his~~

~~or her own safety, privacy during screening, or some other accommodation as a result of being a member of the lesbian, gay, bisexual, transgender, and queer communities. the department, all local corrections agencies and departments statewide, and all private corrections companies to create a safe environment free from sexual abuse for inmates or arrestees, including those inmates or arrestees subject to a United States Immigration and Customs Enforcement hold, by adopting policies and procedures equivalent to or stronger than specified federal regulations. The bill would require the entities to audit, on a 3-year cycle, all facilities operated by the agency, department, or company, as specified. The bill would require the Attorney General to provide means for members of the public to raise concrete and specific concerns about the sufficiency of the published policies or procedures and would require the Attorney General to certify auditors and recommend or require the agency, department, or company to audit specified facilities when there is sufficient reason to believe that a pattern and practice of sexual abuse is occurring in the facility.~~

Because this bill would require a higher level of service from county ~~jails~~ and local correctional facilities, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 2635 of the Penal Code is repealed.*
- 2 ~~2635. The Department of Corrections and Rehabilitation shall~~
- 3 ~~review informational handbooks regarding sexual abuse in~~
- 4 ~~detention published by outside organizations. Upon approving the~~
- 5 ~~content thereof, handbooks provided by one or more outside~~
- 6 ~~organizations shall be made available to inmates and wards.~~
- 7 *SEC. 2. Section 2635 is added to the Penal Code, to read:*

2635. *The Department of Corrections and Rehabilitation, each local corrections agency, and each private corrections company shall create a safe environment free from sexual abuse for inmates or arrestees, including those inmates or arrestees subject to a United States Immigration and Customs Enforcement hold, by adopting policies and procedures equivalent to or stronger than those in the relevant sections of the United States Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape.*

SEC. 3. *Section 2636 of the Penal Code is repealed.*

~~2636. For the purposes of this section, all references to classification of wards shall take effect upon the adoption of a classification system for wards developed by the Department of Corrections and Rehabilitation in compliance with *Farrell v. Allen*, Alameda County Superior Court Case No. RG 03079344.~~

~~The following practices shall be instituted to prevent sexual violence and promote inmate and ward safety in the Department of Corrections and Rehabilitation:~~

~~(a) The Department of Corrections and Rehabilitation inmate classification and housing assignment procedures shall take into account risk factors that can lead to inmates and wards becoming the target of sexual victimization or of being sexually aggressive toward others. Relevant considerations include:~~

~~(1) Age of the inmate or ward.~~

~~(2) Whether the offender is a violent or nonviolent offender.~~

~~(3) Whether the inmate or ward has served a prior term of commitment.~~

~~(4) Whether the inmate or ward has a history of mental illness.~~

~~(b) The Department of Corrections and Rehabilitation shall ensure that staff members intervene when an inmate or ward appears to be the target of sexual harassment or intimidation.~~

SEC. 4. *Section 2636 is added to the Penal Code, to read:*

2636. *The Department of Rehabilitation and each jail facility shall adopt and implement policies and procedures at least as strong as those detailed in Sections 115.5 to 115.86, inclusive, of Title 28 of the Code of Federal Regulations for all facilities that house adult inmates, including pretrial inmates and federal detainees. Adoption of these policies or procedures shall take place no later than July 1, 2014. Full implementation of the policies or procedures shall be completed no later than January 1, 2016.*

1 ~~SEC. 5. Section 2637 of the Penal Code is repealed.~~

2 ~~2637. The Department of Corrections and Rehabilitation shall~~
3 ~~ensure that its protocols for responding to sexual abuse include all~~
4 ~~of the following:~~

5 ~~(a) The safety of an inmate or ward who alleges that he or she~~
6 ~~has been the victim of sexual abuse shall be immediately and~~
7 ~~discreetly ensured. Staff shall provide the safest possible housing~~
8 ~~options to inmates and wards who have experienced repeated~~
9 ~~abuse. Housing options may include discreet institution transfers.~~

10 ~~(b) Inmates and wards who file complaints of sexual abuse shall~~
11 ~~not be punished, either directly or indirectly, for doing so. If a~~
12 ~~person is segregated for his or her own protection, segregation~~
13 ~~must be nondisciplinary.~~

14 ~~(c) Any person who knowingly or willfully submits inaccurate~~
15 ~~or untruthful information in regards to sexual abuse is punishable~~
16 ~~pursuant to department regulations.~~

17 ~~(d) Under no circumstances is it appropriate to suggest that an~~
18 ~~inmate should fight to avoid sexual violence or to suggest that the~~
19 ~~reported sexual abuse is not significant enough to be addressed by~~
20 ~~staff.~~

21 ~~(e) Staff shall not discriminate in their response to inmates and~~
22 ~~wards who are gay, bisexual, or transgender who experience sexual~~
23 ~~aggression, or report that they have experienced sexual abuse.~~

24 ~~(f) Retaliation against an inmate or ward for making an~~
25 ~~allegation of sexual abuse shall be strictly prohibited.~~

26 ~~SEC. 6. Section 2637 is added to the Penal Code, to read:~~

27 ~~2637. Each state or local lockup shall adopt and implement~~
28 ~~policies or procedures at least as strong as those detailed in~~
29 ~~Sections 115.5, 115.6, and 115.111 to 115.186, inclusive, of Title~~
30 ~~28 of the Code of Federal Regulations. Adoption of these policies~~
31 ~~or procedures shall take place no later than July 1, 2014. Full~~
32 ~~implementation of the policies or procedures shall be completed~~
33 ~~no later than January 1, 2016.~~

34 ~~SEC. 7. Section 2638 of the Penal Code is repealed.~~

35 ~~2638. Thoughtful, confidential standards of physical and mental~~
36 ~~health care shall be implemented to reduce the impact of sexual~~
37 ~~abuse on inmates and wards in the Department of Corrections and~~
38 ~~Rehabilitation that include all of the following:~~

39 ~~(a) Victims shall receive appropriate acute-trauma care for rape~~
40 ~~victims, including, but not limited to, treatment of injuries,~~

1 HIV/AIDS prophylactic measures, and, later, testing for sexually
2 transmittable diseases.

3 ~~(b) Health practitioners who conduct or encounter an inmate or~~
4 ~~ward suffering from problems that might indicate sexual abuse,~~
5 ~~such as trauma, sexually transmissible diseases, pregnancy, or~~
6 ~~chronic pain symptoms, shall ask whether the patient has~~
7 ~~experienced sexual abuse.~~

8 ~~(c) Practitioners should strive to ask frank, straightforward~~
9 ~~questions about sexual incidents without shaming inmates or~~
10 ~~displaying embarrassment about the subject matter.~~

11 ~~(d) Confidential mental health counseling intended to help the~~
12 ~~victim to cope with the aftermath of abuse shall be offered to those~~
13 ~~who report sexual abuse. Victims shall be monitored for suicidal~~
14 ~~impulses, posttraumatic stress disorder, depression, and other~~
15 ~~mental health consequences.~~

16 ~~(e) Any adult inmate in mental health counseling for any reason~~
17 ~~shall be entitled to speak confidentially about sexual abuse.~~

18 *SEC. 8. Section 2638 is added to the Penal Code, to read:*

19 *2638. State, county, and local juvenile justice agencies shall*
20 *adopt and implement policies or procedures at least as strong as*
21 *those detailed in Sections 115.5, 115.6, and 115.311 to 115.386,*
22 *inclusive, of Title 28 of the Code of Federal Regulations. Adoption*
23 *of these policies or procedures shall take place no later than July*
24 *1, 2014. Full implementation of the policies or procedures shall*
25 *be completed no later than January 1, 2016.*

26 *SEC. 9. Section 2639 of the Penal Code is repealed.*

27 ~~2639. The Department of Corrections and Rehabilitation shall~~
28 ~~ensure that the following procedures are performed in the~~
29 ~~investigation and prosecution of sexual abuse incidents:~~

30 ~~(a) The provision of safe housing options, medical care, and the~~
31 ~~like shall not be contingent upon the victim's willingness to press~~
32 ~~charges.~~

33 ~~(b) Investigations into allegations of sexual abuse shall include,~~
34 ~~when deemed appropriate by the investigating agency, the use of~~
35 ~~forensic rape kits, questioning of suspects and witnesses, and~~
36 ~~gathering of other relevant evidence.~~

37 ~~(c) Physical and testimonial evidence shall be carefully~~
38 ~~preserved for use in any future proceedings.~~

39 ~~(d) Staff attitudes that inmates and wards cannot provide reliable~~
40 ~~information shall be discouraged.~~

1 ~~(e) If an investigation confirms that any employee has sexually~~
2 ~~abused an inmate or ward, that employee shall be terminated.~~
3 ~~Administrators shall report criminal sexual abuse by staff to law~~
4 ~~enforcement authorities.~~

5 ~~(f) Consensual sodomy and oral copulation among inmates is~~
6 ~~prohibited by subdivision (e) of Section 286 and subdivision (e)~~
7 ~~of Section 288a, respectively. Without repealing those provisions,~~
8 ~~the increased scrutiny provided by this article shall apply only to~~
9 ~~nonconsensual sexual contact among inmates and custodial sexual~~
10 ~~misconduct.~~

11 *SEC. 10. Section 2639 is added to the Penal Code, to read:*

12 *2639. Private corrections companies shall adopt and implement*
13 *the relevant policies or procedures from Section 2636, 2637, or*
14 *2638. Adoption of these policies or procedures shall take place*
15 *no later than July 1, 2014. Full implementation of the policies or*
16 *procedures shall be completed no later than January 1, 2016.*

17 *SEC. 11. Section 2643 of the Penal Code is repealed.*

18 ~~2643. The provisions of this act are severable. If any provision~~
19 ~~of this act or its application is held invalid, that invalidity shall not~~
20 ~~affect other provisions or applications that can be given effect~~
21 ~~without the invalid provision or application.~~

22 *SEC. 12. Section 2643 is added to the Penal Code, to read:*

23 *2643. (a) On or before January 1, 2015, the agency,*
24 *department, or company shall certify in writing to the Attorney*
25 *General that it has adopted policies or procedures as mandated*
26 *by Section 2636, 2637, 2638, or 2639.*

27 *(b) On or before July 1, 2014, every agency, department, or*
28 *company shall make the mandated policies and procedures*
29 *available to the public via its Internet Web site or other accessible*
30 *means.*

31 *(c) The Attorney General shall provide a means for an interested*
32 *member of the public to raise concrete and specific concerns about*
33 *the sufficiency of the published policies or procedures of any*
34 *agency, department, or company. Upon receipt of these concerns*
35 *from a member of the public, the Attorney General shall have 90*
36 *days to review the relevant policies or procedures. If the Attorney*
37 *General finds deficiencies in the published policies or procedures*
38 *of any agency, department, or company, the Attorney General*
39 *shall suggest appropriate modifications to the agency, department,*
40 *or company.*

1 *SEC. 13. Section 2644 is added to the Penal Code, to read:*

2 2644. (a) *Audits of facilities governed by this article shall be*
3 *conducted on a three-year cycle. Beginning January 1, 2016, each*
4 *agency, department, or company shall ensure that each facility*
5 *operated by the agency, department, or company is audited at least*
6 *once every three years. Any agency, department, or company with*
7 *three or more facilities shall ensure that at least one-third of its*
8 *facilities are audited each year of an audit cycle.*

9 (b) *An audit conducted in compliance with Sections 115.400 to*
10 *115.405, inclusive, of Title 28 of the Code of Federal Regulations*
11 *shall suffice for the purposes of this section.*

12 (c) *The Attorney General shall identify procedures, based on*
13 *the principles found in Sections 115.400 to 115.405, inclusive, of*
14 *Title 28 of the Code of Federal Regulations, that define all of the*
15 *following:*

16 (1) *The scope of an audit.*

17 (2) *Auditor qualifications.*

18 (3) *Audit contents and findings.*

19 (4) *Audit corrective action plan.*

20 (5) *Audit appeals.*

21 (d) *The Attorney General shall also certify auditors and*
22 *maintain a list of California-certified auditors. At its discretion,*
23 *the Attorney General may rely on an auditor's certification by the*
24 *United States Department of Justice as evidence that the auditor*
25 *is qualified to perform audits under this section.*

26 (e) *An auditor shall, within 60 days of an audit or the completion*
27 *of a corrective action plan, complete a written audit report for*
28 *each facility audited. The auditor will forward the report to the*
29 *Attorney General, which shall maintain a database of facilities*
30 *that have passed audits and those that have failed them.*

31 (f) *An agency, department, or company shall make all audit*
32 *reports public through its Internet Web site or by other publicly*
33 *available means.*

34 (g) *Acting on its own or in response to concrete and specific*
35 *concerns from an individual, the Attorney General may recommend*
36 *or require an agency, department, or company to undergo an*
37 *expedited audit for one or more of its facilities. The Attorney*
38 *General may only require an expedited audit when it has sufficient*
39 *reason to believe that a pattern and practice of sexual abuse is*
40 *occurring within a facility. An agency, department, or company*

1 shall be provided with a reasonable opportunity to respond to
2 evidence before an expedited audit can be required. The Attorney
3 General shall identify a public means by which the office can
4 receive an individual's report of concrete and specific concerns
5 about a facility.

6 SEC. 14. Section 2646 is added to the Penal Code, to read:

7 2646. For purposes of this article, the following definitions
8 shall apply:

9 (a) "Jail" means any confinement facility of a federal, state, or
10 local law enforcement agency whose primary use is to hold persons
11 pending adjudication of criminal charges, persons committed to
12 confinement after adjudication of criminal charges for sentences
13 of one year or less, or persons adjudicated guilty who are awaiting
14 transfer to a correctional facility.

15 (b) "Juvenile justice agency" means a state, county, or local
16 government agency with facilities primarily used for the
17 confinement of juveniles pursuant to the juvenile justice system or
18 criminal justice system.

19 (c) "Lockup" means a state, county, and local law enforcement
20 agency facility for the temporary confinement of individuals who
21 have recently been arrested, detained, or are being transferred to
22 or from a court, jail, prison, or other agency.

23 (d) "Private corrections company" means a for-profit or
24 nonprofit company operating in the State of California that
25 confines individuals on behalf of a federal, state, county, or local
26 government or that manages a facility that confines individuals
27 on behalf of a federal, state, county, or local government.

28 SEC. 15. Section 2647 is added to the Penal Code, to read:

29 2647. (a) The agency, department, or company shall collect
30 accurate, uniform data for every allegation of sexual abuse using
31 a standardized instrument and set of definitions.

32 (b) The agency, department, or company shall aggregate the
33 incident-based sexual abuse data at least annually.

34 (c) The agency, department, or company shall annually review
35 data collected and aggregated pursuant to this section in order to
36 assess and improve the effectiveness of its sexual abuse prevention,
37 detection, and response policies, practices, and training.

38 (d) The agency, department, or company shall ensure that data
39 collected pursuant to subdivision (a) are securely retained.

1 (e) The agency, department, or company shall make all
2 aggregated sexual abuse data readily available to the public, at
3 least annually, through its Internet Web site or other publicly
4 accessible means.

5 (f) Before making aggregated sexual abuse data publicly
6 available, the agency, department, or company shall remove all
7 personal identifiers.

8 (g) The agency, department, or company shall maintain sexual
9 abuse data collected pursuant to subdivision (a) for at least 10
10 years after the date of its initial collection unless federal, state, or
11 local law requires otherwise.

12 ~~SECTION 1. Section 2636.5 is added to the Penal Code, to~~
13 ~~read:~~

14 ~~2636.5. The Department of Corrections and Rehabilitation and~~
15 ~~the sheriff of a county jail shall create a safe environment free~~
16 ~~from sexual abuse for inmates or arrestees, including those inmates~~
17 ~~or arrestees with a United States Immigration and Customs~~
18 ~~Enforcement hold, by doing all of the following:~~

19 ~~(a) Establishing a zero-tolerance policy for sexual abuse.~~

20 ~~(b) Creating specific policies and procedures prohibiting~~
21 ~~employee sexual misconduct toward inmates or arrestees,~~
22 ~~prohibiting sexual misconduct between either arrestees or inmates,~~
23 ~~or both, and requiring mandatory reporting by employees of all~~
24 ~~allegations of sexual misconduct.~~

25 ~~(c) Establishing a process for how inmates or arrestees are~~
26 ~~screened during an initial intake assessment to ensure their safety~~
27 ~~from harm or harassment, or to keep them from harming others.~~
28 ~~The process established pursuant to this subdivision shall include~~
29 ~~training of employees in identifying whether the inmate or arrestee~~
30 ~~requires a separate detention area for his or her own safety, privacy~~
31 ~~during screening, or some other accommodation, as a result of~~
32 ~~being a member of the lesbian, gay, bisexual, transgender, and~~
33 ~~queer communities.~~

34 ~~(d) Training employees, volunteers, contractors, visitors, and~~
35 ~~other individuals who have contact with inmates or arrestees~~
36 ~~regarding the department or the county sheriff's policies and~~
37 ~~procedures relating to sexual assault identification and prevention,~~
38 ~~and how to report allegations of sexual misconduct.~~

39 ~~(e) Advising all inmates or arrestees regarding the zero-tolerance~~
40 ~~policy during an initial intake process.~~

1 (f) ~~For the purposes of this section, “sexual misconduct” means~~
2 ~~all incidents of willing or unwilling sexual contact, and all incidents~~
3 ~~of sexual activity, including, but not limited to, sexual intercourse,~~
4 ~~sodomy, oral copulation, and other forms of sexual contact.~~

5 ~~SEC. 2.~~

6 *SEC. 16.* If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.